

# The Interim

A Monthly Publication  
May 2014 Issue



## Newsletter

### In This Issue

Children, Families, Health, & Human Services Committee .....	1
Economic Affairs Committee.....	2
Education & Local Government Committee....	3
Energy & Telecommunications Committee....	4
Environmental Quality Council .....	5
Legislative Audit Committee .....	7
Legislative Council .....	7
State Administration & Veterans' Affairs Committee .....	8
Water Policy Committee .....	9
The Back Page	
The Regulated and Unregulated Business of Workers' Compensation in Montana .....	9

### Committee to Review Draft Prescription Drug Bill, Mental Health Cost Estimates

The Children, Families, Health, and Human Services Interim Committee in May will review a draft bill requiring state licensing boards to adopt rules on pain management, including dosing guidelines for narcotic painkillers.

The bill is modeled on legislation passed in Washington state in 2010.

Also at the May 9 meeting, the committee will review cost estimates for providing mental health crisis services in the community. Members asked for the estimates in March as they considered alternatives to treating individuals at the Montana State Hospital and Montana Developmental Center.

#### Prescription Drug Abuse

The committee asked for a bill draft based on Washington state's pain management law after hearing a presentation in March on the law and its effects. The committee has been studying ways to reduce prescription drug abuse as directed by Senate Joint Resolution 20.

The committee will take public comment on the bill draft, which would require boards that license certain health care providers to adopt uniform rules for managing chronic, non-cancer pain.

Also as part of the study, the committee will:

- hear about efforts in Oklahoma to reduce the misuse and abuse of prescription drugs;
- hear proposals from the Montana Medical Association; and
- take a closer look at the operation of Montana's prescription drug registry and improvements that are planned for the registry.

#### Mental Health Study

The committee will continue work on the House Joint Resolution 16 study of state-operated institutions by examining cost estimates for:

- creating mental health crisis services in areas of the state that lack such services;



Click on the Events Calendar  
for up-to-date information  
on committee meetings.

- increasing the number of Department of Public Health and Human Services employees who respond to mental health crisis situations involving individuals with intellectual disabilities;
- revamping facilities that provide 72 hours of crisis mental health response so that they could treat people who are involuntarily committed for longer periods of time; and
- building and operating 16-bed facilities to treat people who are under an involuntary commitment order.

Committee members also will hear about steps the Glendive Medical Center has taken to offer mental health services in eastern Montana.

### Next Meeting

The committee meets next at 8 a.m. on May 9 in Room 152 of the Capitol in Helena. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Sue O'Connell, committee staff.

Committee Website: [www.leg.mt.gov/cfhhs](http://www.leg.mt.gov/cfhhs)

Committee Staff: [soconnell@mt.gov](mailto:soconnell@mt.gov) or 406-444-3597

## EAIC Considers More Food Items, Licensing Issues, Workers' Comp

A too-full agenda at the Economic Affairs Interim Committee in March spilled over to the agenda for its May 12-13 meeting, when the committee will take up two items from March as well as hear a report on a study of Montana food laws along with other new topics.

The two agenda items carried over from the March 27 meeting involve:

- ways to handle licensing board budgets, including whether to create a contingency option and how to ease repeated budget problems for the Board of Hearing Aid Dispensers; and
- what to include in a bill draft intended to restructure the Montana State Fund.

The committee voted in January to have a committee bill to restructure Montana State Fund but left the details for a later meeting. Those details, with comments from Montana State Fund, will be discussed on both May 12 and May 13.

Both State Auditor Monica Lindeen, in her role as insurance commissioner, and the Governor's Office have been asked to comment on the possible restructuring. Options range from taking no action to regulating the State Fund like other insurance companies under the State Auditor's Office, instead

of by statute at the discretion of the State Fund board of directors. Two other options are to take Montana State Fund toward being a private insurer with very few state ties or to completely privatize it, which would require a constitutional amendment.

### Food for Thought

The topic of food has not traditionally tantalized the committee, but in May members will hear a report from the departments of Agriculture, Livestock, and Public Health and Human Services about the study they've carried out to comply with House Bill 630, which was passed by the 2013 Legislature. The departments have held three public hearings and numerous other discussions to determine what Montanans think is needed for food safety and home businesses that sell products at farmers' markets or in generally small quantities that don't necessarily require preparation in a commercial kitchen. Participants in the HB 630 study will provide summaries and recommendations for modernizing Montana's food laws.

Food in the form of milk was a topic of both a March 27 subcommittee meeting and the regular committee meeting later that day. Proponents of the current system of selling milk converged on the subcommittee meeting to urge retention of what is called the 12-day sell-by date. The Board of Livestock in the 1980s adopted a rule that prohibits milk from being sold or offered for public consumption more than 12 days after pasteurization. Some grocery and convenience store operators and some milk distributors have promoted a different dating system, such as allowing the processors to mark milk with a "best if used by" date.

After testimony from both sides and a request for more information about neighboring state laws, the full committee decided a committee bill to change the dating system was unlikely.

### Other March Topics

Also at the March 27 meeting, the committee heard from:

- the Department of Commerce about various economic development activities;
- the Board of Investments regarding how various state funds are invested;
- an analyst with the Pew Charitable Trusts regarding evaluation of tax credits used for economic development;
- Stephanie Morrison of the Legislative Fiscal Division on the relationship between income strata and various Montana-specific tax credits;
- Diana Ferriter of the Department of Labor and Industry, who reported that a survey indicated physicians

were slow to use utilization and treatment guidelines for treating workers' compensation patients. Jean Branscum of the Montana Medical Association, which helped with the survey, noted that many physicians already implement recommended treatment standards so they were not inclined to check the department's guideline tool. The guidelines were an effort in the 2011 passage of HB 334 to reduce medical costs for workers' compensation.

- two attorneys representing injured workers and two representatives of workers' compensation insurers, who discussed the provision in HB 334 that allowed insurers to change the treating physician if the insurer did not think the injured worker's choice of treating physician was appropriate. The insurer representatives noted that they seldom invoke a change. The attorneys representing injured workers gave three case studies of how insurers' changes of treating physician had delayed treatment. The committee asked for more information, particularly from treating physicians, about impacts that HB 334 has had on them.

### Looking Ahead

At the May 12-13 meeting, committee members will resume discussions about restructuring Montana State Fund. They will hear from national insurance representatives about how states use either one insurer to provide a "guaranteed market" for workers' compensation or several insurers in a "residual market" to make certain that employers can purchase required workers' compensation coverage. The discussion is part of the restructuring debate regarding Montana State Fund, which has said that it would like to remain Montana's guaranteed market.

Other workers' compensation topics on the May 12-13 agenda will include:

- a discussion about competition among insurers;
- information about a Department of Labor and Industry survey to assess stay-at-work or return-to-work implementation encouraged by HB 334; and
- information on alternative ways to handle budgeting of the workers' compensation claims called "Old Fund," which were those covered by the State Fund that existed prior to July 1, 1990.

The May 12 agenda also will feature updates from the Insurance Commissioner's Office on the health insurance exchange signups in Montana and the status of Insure Montana, which is operated through that office. Tanya Ask, chair of the board overseeing the Montana Comprehensive Health Association, will provide an update on the phaseout of that last-resort health insurance coverage program, which no longer is needed now that the federal Affordable Care Act

requires health insurers to offer coverage regardless of pre-existing conditions.

### Next Meeting

The committee meets next at 10:30 a.m. on May 12 in Room 317 of the Capitol in Helena. The meeting continues at 8 a.m. on May 13. For more information on the committee's activities and upcoming meeting, see the committee's website or contact Pat Murdo, committee staff.

Committee Website: [www.leg.mt.gov/eaic](http://www.leg.mt.gov/eaic)

Committee Staff: [pmurdo@mt.gov](mailto:pmurdo@mt.gov) or 406-444-3594

## ELG Requests Bill Drafts on Public Records, K-12 Funding Study

After receiving a report from a work group investigating electronic records management at its April 11 meeting, the Education and Local Government Interim Committee authorized the drafting of a potential committee bill to revise and reorganize Montana's open records laws.

The work group recommended this revision of Title 2, Chapter 6, MCA, based on feedback from state and local government records managers, who described confusion over records management processes and, in particular, definitions. The work group noted that while modest improvements could be made by amending specific sections in current law, more significant gains could be made if the entire chapter was reorganized.

The work group was formed to help the committee carry out the House Joint Resolution 2 study of electronic records management.

The committee also asked for a separate bill draft enabling the Montana Historical Society to hire a consultant to develop a plan for digital archives. Members will review both bill drafts in June.

The committee agreed to incorporate a number of non-statutory recommendations from the work group for its final HJR 2 report and also received an update from state Chief Information Officer Ron Baldwin regarding the state's efforts to seek an electronic records management system.

### School Funding Review

Along with the bill drafts related to HJR 2, the committee also requested the drafting of a bill to create a special interim committee during the 2015-2016 interim to study K-12 funding. Section 20-9-309, MCA, requires that the Legislature authorize a study at least every 10 years "to reassess the educational needs and costs related to the basic system of free quality public elementary and secondary schools."

The 2015-2016 review would be the first 10-year reassessment following the study conducted by the Quality Schools Interim Committee in 2005. A bill draft for the special committee will be presented to ELG at the June meeting.

The committee also received updates from the Montana University System and the Office of Public Instruction, as well as a report from Taryn Purdy of the Legislative Fiscal Division on how grants applied for and received by agencies relate to the budget process.

### Shared Policy Goals

The Subcommittee on Shared Policy Goals for Education met on April 10 to continue its work on reviewing and revising the shared policy goal documents for K-12, K-20, and the university system. The documents aim to advance interagency cooperation and the quality of education policymaking in the state.

The subcommittee received updates on revision efforts for administrative rules that cover educator licensure and professional educator preparation program standards. John Cech, deputy commissioner for two-year and community college education, reported to the subcommittee on the work of the Dual Enrollment Task Force, which seeks to expand dual enrollment opportunities for Montana students. Annette Miller of the Department of Labor and Industry provided an overview of the Montana Career Information System, which helps students with academic planning for both college and careers.

The subcommittee is focusing on the K-20 goals as an opportunity to further link elementary and secondary education with post-secondary education. Members will meet again at a yet-to-be-determined time adjacent to the June 16-17 meeting of the full committee.

### On the Horizon

Agenda items for the June meeting include:

- an exploration of local government issues, focusing on the impacts of oil and gas development and infrastructure needs;
- a report on efforts related to the Interstate Compact on Educational Opportunity for Military Children;
- an update from the K-12 Data Task Force;
- reviews of agency-requested legislation and possible committee bill drafts for the 2015 legislative session;
- an update from and discussion with the Board of Public Education; and
- a presentation on digital learning.

### Next Meeting

The committee meets next on June 16-17 in Room 137 of the Capitol in Helena. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Pad McCracken, committee staff.

Committee Website: [www.leg.mt.gov/elgic](http://www.leg.mt.gov/elgic)

Committee Staff: [padmccracken@mt.gov](mailto:padmccracken@mt.gov) or 406-444-3595

### ETIC to Meet in Great Falls, Tour Energy Facilities

The Energy and Telecommunications Interim Committee meets in Great Falls May 8-9 to visit several energy-related facilities and to host a discussion of NorthWestern Energy's proposed purchase of the PPL Montana dams.

The meeting begins at 9 a.m. on May 8 at Great Falls College Montana State University. In the afternoon, the committee will visit the Calumet Montana Refinery and the Highwood Generating Station. Calumet Montana Refining Co. produces about 10,000 barrels of various petroleum products per day. It is the closest U.S. refinery to the Alberta oil sands and processes heavy crude that is received via pipeline and railcar. The Highwood Generating Station is a natural gas power plant near Great Falls. The plant was built in 2011 but has not been economical to operate and has mostly been idle. The 40-megawatt plant was built by Southern Montana Electric Generation and Transmission Cooperative, which has filed for bankruptcy. Southern recently reached a proposed settlement to repay about \$21 million over four years and to sell the Highwood plant.

Friday morning, the committee will tour the PPL Montana dams, with a focus on the upgrades at Rainbow Dam. The committee will return to the Great Falls College MSU campus and host a discussion about NorthWestern Energy's plans to purchase the 11 dams that PPL Montana owns. The proposed purchase will not likely be complete until September 2014, and currently the sale price is \$900 million.

NorthWestern Energy will present an overview of the proposal. The Montana Public Service Commission will discuss the process the PSC is following in assessing the sale. The Montana Consumer Counsel will discuss its recent analysis, which raised concerns that Montana customers could pay more for electricity under the proposed purchase than if NorthWestern acquired the electricity from another source. The Consumer Counsel is the constitutional entity responsible for representing residential and small business interests in matters before the PSC.



The committee tentatively plans to wrap up its time in Great Falls with a tour of the central heating plant at Malmstrom Air Force Base.

### RPS Review

Committee members also will continue with their analysis of the impacts of Montana's renewable portfolio standard (RPS). As directed by Senate Joint Resolution 6, the committee is focused on the economic impacts of the RPS, the environmental benefits of the standard, and the impacts the standard has had on Montana consumers.

In March, committee members agreed to send a letter to the Consumer Counsel requesting an analysis of the impacts that Montana's renewable energy mandate has had on Montana ratepayers. The committee will review the analysis and receive a draft RPS report prepared by staff. Members also will begin developing findings and recommendations.

### Next Meeting

The committee meets next at 9 a.m. on May 8 in Room G45/46 at the College of Great Falls MSU, 2100 16th Ave. S. The meeting will continue on May 9. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Sonja Nowakowski, committee staff.

Committee Website: [www.leg.mt.gov/etic](http://www.leg.mt.gov/etic)

Committee Staff: [snowakowski@mt.gov](mailto:snowakowski@mt.gov) or 406-444-3078

## Options Expected to Emerge at May EQC Meeting

As spring nudges closer to summer, interim committees start evaluating options to recommend to the 2015 Legislature. The Environmental Quality Council meeting on May 14-15 includes debates on historical buildings, public lands, and fish and game licenses.

### SJR 4 Study: State Historic Properties

At its April meeting, the EQC's Senate Joint Resolution 4 work group, tasked with continuing the council's study of the Montana Heritage Commission's (MHC) administration of state-owned properties at Virginia City, Nevada City, and Reeder's Alley in Helena, voted to forward draft legislation to the EQC for its review in May.

The proposal is intended to streamline and update the MHC's governing statutes, incorporating many of the items discussed by the work group and the EQC during this interim's study.

Key features of the draft include:

- removal of language requiring the MHC to continue to acquire property and purchase fee title interests in real and personal property, leaving the focus instead on managing properties the state has already acquired;
- removal of references to MHC-managed properties being economically independent and self-supporting, providing instead that the goal be economic stability;
- revision of the authority for appointing MHC members, so that if the speaker of the Montana House of Representatives and the president of the Montana Senate do not appoint the members for which they are responsible, the authority reverts to the governor;
- removal of language that requires certain MHC profits to be deposited in the Cultural and Aesthetic Trust; and
- removal of language that requires proceeds from the sale of personal property from the Bovey assets be placed in a trust fund.

The work group weighed whether or not to recommend that the draft strike the provision in section 22-3-1003(3)(c), MCA, that states: "It is the intent of the 58th legislature that no general fund money be provided for the operations and maintenance of Virginia City and Nevada City beyond what has been appropriated by the 55th legislature." After learning from legislative legal staff that the provision is not legally binding and does not constitute a statutory prohibition on the use of general fund money for this purpose, the work group chose to leave the language intact and present the details of its discussion to the EQC for its consideration.

For more information on the SJR 4 study, contact Leanne Kurtz, work group staff, at 444-3593 or [lekurtz@mt.gov](mailto:lekurtz@mt.gov).

### HB 609 Study: Hunting and Fishing Licenses

The budgetary earmarks and projected expenditures of the Department of Fish, Wildlife, and Parks will top the House Bill 609 study discussion on May 14.

FWP says it's facing an annual funding shortfall of \$5.75 million in its general license account to pay for the current level of services and wildlife management the agency provides. The EQC has asked for a more detailed account of the situation.

A governor-appointed advisory council has prepared a slate of ideas for changing FWP's licensing structure to provide more revenue to the department while also streamlining the licensing system. The EQC reviewed these recommendations in March but did not take action on whether to move the proposals forward.

As currently proposed, the advisory council's package adds up to an estimated \$6.2 million in additional funding for the department each year.

HB 609 directed the EQC to study the state's hunting and fishing license system. The EQC has incorporated the advisory council's effort into its work plan.

The advisory council's preliminary recommendations to date include:

- reducing the time between legislative review of the license structure and prices from approximately 10 years to four years;
- standardizing the pricing of free and discounted hunting and fishing licenses currently offered to youth, seniors, and disabled hunters so that they cost 50 percent of the equivalent full-priced licenses;
- consolidating youth license pricing from three age groups to two;
- raising the age at which seniors are eligible for discounted licenses from 62 to 67;
- creating a base hunting license of \$10 for residents and \$15 for nonresidents and requiring that it be purchased before individual species tags;
- increasing nonresident moose, sheep, mountain goat, and bison license prices from \$750 to \$1,250;
- capping the price of the nonresident B-10 big game combination and B-11 deer combination licenses at \$999 and \$625, respectively;
- repricing the "Come Home to Hunt" (87-2-526, MCA) and "Nonresident Relative of a Resident" (87-2-514, MCA) licenses so that they are both priced at 50 percent of the equivalent full-priced nonresident license. Currently "Come Home to Hunt" licenses are full-priced and "Nonresident Relative of a Resident" licenses are four times the resident price.
- increasing fishing license prices for residents from \$5 to \$8 for a two-day license and from \$18 to \$24 for a season license;
- increasing fishing license prices for nonresidents from \$15 to \$26 for a two-day license and from \$60 to \$86 for a season license;
- converting the 10-day nonresident fishing license into a seven-day license and charging \$56, compared with the current 10-day license price of \$43.50; and
- changing the Fish and Wildlife Commission refund policy for nonresidents who are unsuccessful in the March

15 permit drawing so that FWP may retain only 5 percent of the fee for a returned license, instead of 20 percent.

For more information on the HB 609 study, contact Hope Stockwell, legislative research analyst, at 444-9280 or [hstockwell@mt.gov](mailto:hstockwell@mt.gov).

### **SJR 15 Study: Federal Land Management**

A working group of the EQC is asking counties in Montana to identify specific projects on federal land in need of forest restoration.

Gov. Steve Bullock recently identified to the U.S. Department of Agriculture more than 5 million acres of general forest landscapes affected by insects and disease. Pursuant to the Agriculture Act of 2014, commonly referred to as the Farm Bill, the agriculture secretary may designate projects within those landscapes for prioritized forest management and restoration.

The governor did not identify specific forest projects. Four EQC members working on a federal land management study are seeking information from counties on specific projects in need of forest restoration. Counties with significant federal land holdings were mailed a letter last month asking for restoration proposals for areas characterized by declining forest health, a risk of substantially increased tree mortality, or an imminent risk to public infrastructure, health, or safety.

The request is related to the survey sent last year to selected counties pursuant to SJR 15, passed by the 2013 Legislature for a study evaluating the management of certain federal lands in Montana, assessing risks, and identifying solutions. The SJR 15 work group is chaired by Sen. Jennifer Fielder and includes Sen. Brad Hamlett and Reps. Ed Lieser and Kerry White.

For more information on the SJR 15 study, contact Joe Kolman, legislative environmental analyst, at 444-3747 or [jkolman@mt.gov](mailto:jkolman@mt.gov).

### **Other Topics**

Also at the May meeting, the EQC is scheduled to receive updates on the state water plan, collection of natural resource trend data, the Greater Sage-Grouse Habitat Conservation Strategy, and wolf, grizzly and bison management. In addition, the council will hear a report about the Water Policy Interim Committee's consideration of a proposal by Reps. Nancy Ballance and Keith Regier and others to study various aspects of the proposed water rights settlement with the Confederated Salish and Kootenai Tribes.

### **Next Meeting**

The council meets next on May 14-15 in Room 317 of the Capitol in Helena. For more information on the council's

activities and upcoming meeting, visit the council's website or contact Joe Kolman, council staff.

Council Website: [www.leg.mt.gov/eqc](http://www.leg.mt.gov/eqc)

Council Staff: [jkolman@mt.gov](mailto:jkolman@mt.gov) or 406-444-3747

## Audit Committee Meets May 23

The Legislative Audit Committee will review recent audits of state programs and services when it meets May 23 in Helena.

The Legislative Audit Division anticipates reporting on the following topics.

### Financial Compliance Audits

- Department of Agriculture
- Department of Livestock
- Montana Arts Council
- Montana Single Audit Report

### Financial Audits

- Montana Water Pollution Control and Drinking Water State Revolving Fund Programs
- Public Employees' Retirement Board
- State of Montana

### Performance Audits

- Childhood Immunization
- Universal System Benefits (USB) Program

### Follow Up Reports

- Alternative Energy Revolving Loan Program
- Montana Information Technology Act Implementation
- Unemployment Insurance
- Veterans' Homes Administration

### Contract Audits

- Blue Cross Blue Shield
- Cigna
- Dawson Community College
- Delta Dental
- Flathead Community College
- MedImpact
- Miles Community College
- NewWest

In addition, the committee is scheduled to prioritize performance audit projects for the next fiscal year.

The Legislative Audit Division provides independent and objective evaluations of the stewardship, performance, and cost of government policies, programs, and operations. The division is responsible for conducting financial, performance, and information system audits of state agencies or their programs, including the Montana University System. For more information, call the division at 406-444-3122.

To report suspected improper acts committed by state agencies, departments, or employees, call the division's fraud hotline at 800-222-4446 or 444-4446 in Helena.

### Next Meeting

The committee meets next at 8 a.m. on May 23 in Room 172 of the Capitol in Helena. For more information on the committee's activities or upcoming meeting, visit the committee's website or contact Legislative Auditor Tori Hunthausen.

Division Website: [www.leg.mt.gov/audit](http://www.leg.mt.gov/audit)

Division Staff: 406-444-3122

## Council Considers Legislative Improvements, 2015 Session Dates

The Legislative Council continued its exploration of legislative practices in other states when it met in April, reviewing items such as budget processes, legislator compensation, and leadership staffing support.

The council asked staff to identify potential issues related to transitioning from holding legislative sessions in odd-numbered years to holding them in even-numbered years. Staff will provide high-level information on statutory and other changes needed to make that change and will provide the council with some of the major questions that would need to be answered.

A new [Legislative Improvement page](#) on the council's website contains all the materials prepared for the council's review of legislative practices in other states.

### 2015 Session Prep

In preparation for the 2015 legislative session, the council looked at proposed curricula for legislator orientation. Party caucuses and legislator orientation will be held Nov. 12-14 and may continue for a day or two in the first week of December.

The council is considering expanding orientation to all legislators in December, when the House and Senate Rules committees meet and presiding officer training is held. The council also continued its discussion on changing the legisla-

tive calendar but took no immediate action. Staff presented an opportunity to improve parking during session and will bring the results to the June meeting.

### **Legislator Electronic Communications**

The council created a subcommittee on legislator electronic communications that discussed public records and the right-to-know requirements. The subcommittee will continue work on archiving documents, training legislators on management of electronic communications, providing a common e-mail for all legislators, and providing guidance on what is considered public information.

### **Call for Legislator Input on Rules**

The council will be forming a Rules Subcommittee to prepare draft rules for consideration by the Rules Committees appointed for the 2015 session. The council is seeking information from legislators on potential rules changes or areas of concern.

Any legislator wishing to provide comments, questions, or ideas on rules, training, or ways to assist legislators in understanding or using the rules should contact Susan Fox or Todd Everts.

### **Next Meeting**

The council is tentatively scheduled to meet next on June 9-10 at the Capitol in Helena. For more information on the council's activities and upcoming meeting, visit the committee's website or contact Susan Byorth Fox, committee staff.

Committee Website: [www.leg.mt.gov/legcouncil](http://www.leg.mt.gov/legcouncil)

Committee Staff: [sfox@mt.gov](mailto:sfox@mt.gov) or 406-444-3066

## **SAVA Considers Changes in Selection Process for Political Practices Commissioner**

At its April 9 meeting, the State Administration and Veterans' Affairs Interim Committee voted to consider a bill draft that would change how the Commissioner of Political Practices is selected. The bill would establish a five-member nomination committee modeled after the Districting and Apportionment Commission, which develops the redistricting plan for legislative districts.

Current law provides for a four-member selection committee composed of the speaker of the Montana House of Representatives, the president of the Montana Senate, and the minority leaders of both houses of the Legislature. The committee, by majority vote, must submit a list of two to five names to the governor for consideration. However, the governor is not required to appoint the commissioner from the list of submitted names.

The draft bill would add a fifth member to the selection committee. This fifth member would be selected by the other four members and would act as the committee's presiding officer. If the four committee members cannot agree on the fifth member, the Montana Supreme Court would appoint that member.

The bill also would require the governor to appoint the commissioner from the list of submitted names. This process may raise constitutional concerns based on the separation of powers doctrine, but SAVA was willing to proceed and allow for a possible court determination if the process was ever challenged.

The bill draft will be presented to the committee at its June 5 meeting. Interested stakeholders and the public will be invited to comment at that time.

### **Election Law Revisions**

Also on April 9, the committee approved a preliminary bill draft generally revising election laws. The bill was developed by SAVA's Subcommittee on Elections, which was tasked with examining election laws as part of the committee's Senate Joint Resolution 14 study. The resolution calls for an examination of how to combine primary and school elections. However, the subcommittee determined that numerous inconsistencies in current law needed to be cleaned up before members could further consider combining primaries with school elections.

The general revision bill is still a work in progress, so the full committee will continue to review the bill at the June 5 meeting. The major provisions of the bill relate to special purpose district and school elections. Among other things, the bill as currently drafted would:

- require all special purpose district elections, except elections concerning funding, be held on the same day as the school trustee elections, which are held on the Tuesday after the second Monday in May;
- apply the late voter registration law to school elections conducted by school clerks; and
- standardize candidate filing deadlines for any type of election at no sooner than 145 days and no later than 85 days before the election.

### **Next Meeting**

The committee meets next on June 5 in Room 137 of the Capitol in Helena. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Sheri Scurr, committee staff.

Committee Website: [www.leg.mt.gov/sava](http://www.leg.mt.gov/sava)

Committee Staff: [sscurr@mt.gov](mailto:sscurr@mt.gov) or 444-3596



## Water Committee to Focus on Role of Water Court

Montana's Water Court may need a makeover, members the Water Policy Interim Committee are expected to hear in May.

Two Montana judges – including the chief justice of the Montana Supreme Court – will present their ideas of perhaps expanding the reach of the specialized court. The Legislature created the court in 1981 to adjudicate thousands of water rights claims filed in the 1980s and 1990s. The court's main task is to determine the final priority list of water rights holders in every hydrologic basin, as well as other important aspects of each claim, such as place of use or period of use. As part of this process, the Water Court weighs objections to each claim. The adjudication is expected to be completed around 2028, according to projections in a 2010 audit by the Legislative Audit Division. The court must approve all water rights settlements with federal agencies or Indian tribes.

The Water Policy Interim Committee meets May 12-13 in Helena, with discussion of the Water Court scheduled for the first day.

The Water Court is only one venue for solving regulatory issues related to water rights. The Department of Natural Resources and Conservation issues permits for new water uses or for changes to existing rights. Meanwhile, district courts enforce water rights through the appointment of water commissioners and also untangle water rights disputes. District courts routinely lean on Water Court masters to aid

in enforcement actions or “certified controversies.” DNRC staff provide technical help to the Water Court.

Chief Water Judge Russell McElyea told the Water Policy Committee last year that it may be time to expand the role of the Water Court to improve efficiency.

Montana Supreme Court Chief Justice Mike McGrath will also discuss the topic at the May 13 meeting. The University of Montana Law School will present a study of the legal processes related to water rights in Montana.

The proposed water rights settlement for the Confederated Salish and Kootenai Tribes is also on agenda. The topic will include a discussion of water rights claimed off the Flathead Indian Reservation lands and a proposal by Rep. Nancy Balance, R-Hamilton, and Rep. Keith Regier, R-Kalispell, for further analysis of the settlement.

### Next Meeting

The committee meets next on May 12-13 in Room 172 of the Capitol in Helena. For more information on the committee's activities and upcoming meeting, visit the committee's website or contact Jason Mohr, committee staff.

Committee Website: [www.leg.mt.gov/water](http://www.leg.mt.gov/water)

Committee staff: [jasonmohr@mt.gov](mailto:jasonmohr@mt.gov) or 406-444-1640

## The Back Page

### The Regulated and Unregulated Business of Workers' Compensation in Montana

By Pat Murdo

Legislative Research Analyst, Legislative Services Division

**Author's Note:** Before your eyeballs flip backward thinking this article is about workers' compensation benefits or premiums, let me stress that the scope really is about business. There's no discussion about workers' compensation benefits because all insurers have to pay the same benefits and treat injured workers in the same way. There is very little about premiums because most insurers set their prices using similar mechanisms. So after the next two paragraphs, the information won't be too insurance-heavy, except from a business perspective. This article focuses on business, business regulation, and the state's involvement in business.

Workers' compensation insurance is a big cost to businesses and is required in Montana for almost all businesses (there are 26 exemptions to this requirement, including one for owners of a business). In exchange for paying premiums based on payroll, the number of accidents they've reported, and a few other factors, employers generally are assured that they will not be sued if an employee is injured on the job. The injured worker generally is assured of getting about two-thirds of the worker's pre-injury paycheck if the worker

is unable to return to work. An injured worker's medical bills are fully paid regardless of whether the worker has health insurance. Most workers' compensation claims in Montana are medical-only claims, meaning that a worker might have used sick leave or was able to return to work quickly.

Bottom line: Workers' compensation is important to workers and to businesses, impacting hundreds of thousands of

people in Montana's payroll employment universe of 452,800 workers.

### The Business of Workers' Compensation

Montana allows businesses three ways to get their workers' compensation coverage: either through self-insurance, through private insurers, or through Montana State Fund, which is a state-created entity that is required to provide workers' compensation insurance to any employer that is up-to-date with its premiums. In some states, such as Washington, North Dakota, and Wyoming, a department within state government provides workers' compensation coverage. That makes comparisons of workers' compensation costs and coverage with these states difficult. Other states are similar to Montana. And in a few states there are no insurers that provide a guaranteed market or serve as the insurer of last resort, in the way the Montana State Fund does. Some of these states have what is called a residual market or assigned risk pool, an alternate way to provide coverage to those unable to buy coverage elsewhere.

**Bottom line:** Montana is not unique in how employers can obtain workers' compensation insurance. Montana is less like other states, however, in that the dominant workers' compensation provider — Montana State Fund — is primarily self-regulated within statutory bounds, particularly in terms of business financial decisions. Other workers' compensation insurers operating in Montana are regulated by the Insurance Commissioner.

### Reasons for Differentiated Business Regulation

Several factors have contributed to the differences in the way in which Montana State Fund and the other insurers are regulated, as outlined here.

- **Guaranteed Market.** As long as an employer is not delinquent in paying workers' compensation premiums, the Montana State Fund must provide workers' compensation coverage as the guaranteed market in this state. Having to provide coverage to a new business is a major concern for an insurer because the insurer does not know the employer's or employees' risk history. For example, the insurer doesn't know if the workers are trained and safety conscious and whether the employer maintains safe equipment. Most new and small businesses in Montana end up with higher premiums relative to more established and larger businesses because of some of these risk-related unknowns. Some small businesses continue to have higher premiums even after years in business simply because their premiums would never cover the cost of a major catastrophic accident.
- **History.** A muddled past — including scandal and financial cataclysm (at least in some peoples' eyes) — created

the Montana State Fund regulatory system now in effect. Before 1975, an Industrial Accident Board was attached to the Department of Labor and Industry, and then the department itself ran what was simply called Plan 3, or the State Fund. However, when the state realized that premiums had been artificially suppressed and had not kept up with the costs of workers' compensation benefits, the Legislature and executive branch took action. First, the Legislature instituted a payroll tax in 1987 to help stabilize what eventually became known as the Old Fund, or the account necessary to pay claims for injuries that occurred under the old system. Eventually, these were pegged to injuries that happened before July 1, 1990. In 1989, the Legislature created a short-lived new entity that was to be regulated much like other insurers under the Insurance Commissioner's Office, which regulates the insurance industry in general.

When problems arose with a still financially strapped State Fund, a special session of the Legislature instituted the latest changes that went into effect as of July 1, 1990. Those changes basically allowed the Montana State Fund board of directors to self-regulate within constraints of state law and gave oversight regarding financial solvency to the Legislative Auditor. The Legislative Auditor routinely reviews all state entities but is specifically required to review Montana State Fund's rates and finances annually. For other insurers, the Insurance Commissioner handles that task and also has the ability to challenge rates.

- **Strong Role for State's Agriculture/Livestock Industry.** Unlike many states, Montana requires agricultural and livestock workers to be covered by workers' compensation insurance. These operations often have few employees, making them likely candidates for coverage by Montana State Fund. In addition, because Montana State Fund has a legislative exemption from using the same classifications that other insurers do in certain areas, farmers and ranchers benefit from coverage by Montana State Fund because they can use a unified classification for the variety of jobs that occur on a farm or ranch. Other insurers must distinguish between the types of jobs and must charge premiums based on the proportion of each job the worker does in a month. There are a few classifications other than agriculture that Montana State Fund also can use that private insurers cannot.

**Bottom line:** Roughly 80 percent of the businesses in Montana have fewer than 20 employees, meaning that their options for workers' compensation coverage may be more limited than for larger companies. That said, some private insurers do specialize in handling smaller firms and may be more interested in competing in Montana if they saw a more

even-handed regulatory atmosphere. Generally, though, if a small business cannot obtain insurance in the private market or through a self-insurance association in the firm's industry, Montana State Fund provides the fall-back position in its role as the guaranteed market.

### **If the System's Not Broke...**

Over the 2013-2014 interim, the Economic Affairs Interim Committee has looked at Montana State Fund's regulatory standing as part of a study under House Joint Resolution 25. Among the questions frequently raised are variations of: Why look at change? Is the system broken?

The committee has considered whether to put regulation of Montana State Fund under the Insurance Commissioner's purview. The committee also has heard proposals for giving Montana State Fund more independence from its current status as a state entity. Although Montana State Fund accrues some benefits from being a state entity, it also incurs costs, such as being subject to state-based payroll and technology requirements.

For years, Montana State Fund has resisted the idea of being regulated by the Insurance Commissioner's Office. This year has seen less reluctance, in part because sound financial standing has meant that many of the solvency concerns that arose during the brief regulation by the Insurance Commissioner from January 1990 to July 1, 1990, no longer make regulation by the Insurance Commissioner problematic. Rather, the potential exists for seeing such regulation as one of equity with other insurers. And from a political perspective, regulation by the Insurance Commissioner's Office may remove some of the concerns that have resulted from some legislators viewing with distrust the self-regulation the State Fund Board of Directors is allowed on financial issues. The distrust has focused in part on bonuses of more than \$10,000 each paid to management in good years, although the board has a directive in 39-71-2315, MCA, to operate the organization as would directors of a private mutual insurance carrier. This presumably means paying competitive salaries.

There are two main perspectives regarding whether the system is broken or change is needed. One uses competition as a barometer, and the other supports more certainty in regulation and the market.

In terms of competition, the workers' compensation system places burdens on Montana State Fund to be the guaranteed market but also gives certain benefits. For example, Montana State Fund does not have to pay the premium tax that private insurers have to pay. This, of course, means that Montana State Fund can price certain premiums more competitively than private insurers can. So from the perspective of other insurers, the system is not necessarily fair. From Montana State Fund's perspective, having to serve as the guaranteed

market is not necessarily fair. The federal government sweetens that burden by providing a tax exemption for workers' compensation insurers that serve as the guaranteed market and meet certain other criteria, which Montana State Fund meets.

Whether changes in regulation would bring more insurers into Montana's market is not necessarily clear. A key consideration is Montana's ranking in workplace injuries. In recent years, the state has been either first in the nation or among the top five states in workplace injuries across the board, including among sedentary jobs. Insurers may be reluctant to enter a market where their product is likely to be used frequently.

Other considerations posed by the HJR 25 study include the theory that Montana traditionally has had a judicial climate seen to favor the injured worker. Among conditions often mentioned in favor of the injured worker are a constitutional provision that a worker injured on the job may not be deprived of full legal redress for an injury caused by someone other than a fellow worker or immediate employer as long as the employer provides workers' compensation coverage. (Article II, Section 16). The committee is also studying that issue of subrogation (for example, an employer being able to recover damages from a third party that caused the worker's injuries), among other issues.

And, finally, we're talking business. Montana's predominantly small business climate may not be attractive to large insurers, who may be lukewarm to covering any but the Montana affiliates of their large out-of-state clients. The market is about one-half of 1 percent of the national workers' compensation market, which is not a lot of business for someone who would have to set up agent networks and in-state adjusters. A sizeable number of companies already are eligible to write workers' compensation in Montana. Of an estimated 500 or so eligible companies, fewer than 300 do so. Of these, many are in the same overall group of companies. For example, the company with the largest market share in 2008 was Liberty Northwest, at 33.6 percent. The Liberty Group of companies posted a 45.5 percent share of the private or Plan 2 insurers' market that year. As of 2013, with more insurers writing coverage here, the Liberty Group market share has dropped to 24.47 percent, with Liberty Northwest itself down to a 17.7 percent market share. Basically, only 22 discrete companies have a market share of at least 1 percent in Montana. Many of those belong to 12 insurer groups.

In 2013, other major private insurers included the following companies and percent of the market:

- Travelers group, 9.55 percent;
- Victory Insurance, Miles City, 9.36 percent;
- Employers group, 7.82 percent;
- Zurich American group, 7.76 percent;
- AIG group, 6.53 percent; and
- Hartford group, 5.4 percent.

For the overall picture of competition between private insurers and Montana State Fund, the Department of Labor and Industry's Workers' Compensation Annual Report listed Montana State Fund's share of the written premium market at 57 percent while private insurers had 43 percent in 2012. That was a drop for Montana State Fund from 67 percent of the premium market share in 2008. Because self-insurers do not necessarily pay premiums, self-insurers are not counted in the written premium market share but insure more than 100,000 workers.

These data indicate a market in flux, partly because of the economic recession that saw impacts between 2008 and 2012. Other factors that may be at work are not necessarily obvious. However, some legislators have suggested that improving competition in the market would encourage better premium rates for employers and better service for both employers and injured workers.

Certainty regarding regulation also is cited as a reason for exploring changes to Montana State Fund's regulatory structure. Advocates of this position believe the Legislature may make fewer attempts to change the way Montana State Fund functions if legislators see that Montana State Fund is required to operate like — and be treated the same as — other insurers.

Both the 2011 and 2013 legislative sessions saw attempts to require Montana State Fund to pay for the Old Fund claims that accrued prior to July 1, 1990, instead of having the general fund pay the claims. The general fund has paid those claims under changes the Legislature enacted during a 2002 special session and reaffirmed in 2003. These claims are projected to cost between roughly \$46 million and \$110 million over the next 35 or so years. The off-the-budget siphon amounts to about \$9 million a year in the early years, dwindling eventually as fewer claims are made. (Workers' compensation benefits can last for the life of an injury or longer. Some serious cases are resolved only on death of the claimant or a beneficiary.)

Because legislation involving the Old Fund in both 2011 and 2013 addressed how Montana State Fund was to handle its business, some Montana State Fund officials have expressed

concern that legislative proposals every two years to change its business operations might create uncertainty in rate-setting. What might be worse, in the eyes of these officials, would be a politically derived, artificially low premium that imbalanced the Montana State Fund's increasingly sound financial condition.

Another buttress for the consistency argument is that regulation by the Insurance Commissioner's Office uses professional standards that apply to all insurers. The current model — in which the Montana State Fund is regulated by statute and its own board of directors with oversight by the Legislature, rather than a regulatory body — gives more opportunity for inconsistent messages.

### **Why Is a State Entity Operating Like A Business?**

As mentioned earlier, Montana is not the only state to have a state-operated state fund. The term "state-operated" is subject to debate. Montana State Fund would point out that by statute it is a nonprofit, independent public corporation. However, the following criteria allow for some leeway in saying that Montana State Fund is a state entity that operates as an insurance business: creation by statute, operation by a board of directors appointed by the governor, and designation as a state agency unless specifically exempt.

Since 1995, seven states have moved to privatize their state funds in one way or another. Michigan, interestingly, sold its state fund in 1995 to a Blue Cross Blue Shield affiliate. That approach answered a question that might be posed in Montana: Could Montana State Fund "buy" its freedom if the ultimate assets and liabilities for all Montana State Fund claims are considered state assets and liabilities? The answer to that question probably would be found in the highest court. But while an argument exists for Montana State Fund assets and liabilities ultimately being those of the state, there is less of an argument that the assets and liabilities of a state entity could, in fact, be sold as Michigan's state fund was.

Other states have approached the issue of assets and liabilities by simply cutting their state funds loose after stating that the state had no liability and that the assets and liabilities belonged to the new entity. However, the historical structure of Montana State Fund may prevent Montana from taking that approach. Disputes continue about the meaning of the 1990 changes for today's liabilities and assets.

Numerous entanglements would complicate any decision to privatize Montana State Fund, including the need for a constitutional amendment to remove reference to the state compensation insurance fund from the investment strategies outlined in Article VIII, Section 13. Other entanglements include the use of the Public Employees' Retirement System for the state employees who work at Montana State Fund. If the Legislature allowed Montana State Fund to drop its future



participation in that retirement system, the lack of expected income would undermine efforts to stabilize the system. When a similar withdrawal occurred for university personnel changing retirement systems, the Teachers' Retirement System asked for and received an annual payout through July 1, 2033, from the Montana University System to help cover the cost of university personnel who retired under TRS prior to the change.

Bottom line: There is no glaring reason to change how Montana State Fund operates as a provider of guaranteed workers' compensation coverage in Montana. However, changing regulatory oversight might improve the competitive climate for workers' compensation in Montana, in part because the change would send a message that Montana is interested in creating a more level regulatory field less prone to biennial political targeting. Many unknowns remain, including the attractiveness of Montana as a market when the state's safety rankings are low. Finally, state involvement in how Montana State Fund operates has many aspects, which may be unraveled only with difficulty for those who want Montana State Fund to become a private insurer.